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Testimony on “ANWR: Jobs, Energy and Deficit Reduction”

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Thank you Mr. Chairman, Ranking Member Markey and Members of the Committee for the opportunity to speak to you today about the importance of ensuring that mining companies pay their fair share and internalize the costs of doing business.

Earthworks is a national conservation organization dedicated to protecting communities and the environment from destructive mineral development, here in the United States and internationally. We work closely with broad coalitions of local government, Native Americans, citizen groups and other conservation organizations to improve the policies governing hard rock mining and oil and gas development.

Record Profits

In 2010, the top five hardrock mining companies with operations in the United States – made a total profit of \$29 billion. Rio Tinto, who operated the Bingham Canyon mine in Utah, defined last year by "record underlying earnings" and "record cash flow." Freeport McMoran, who operates seven copper mines in the Southwestern United States said that this year yielded "the best financial results in our company's history."

With precious metals prices near all time highs, big mining companies are enjoying astounding profits. Newmont Mining of Denver – the largest producer in the United States and operator of three mines that are among the nation's ten biggest sources of toxic pollution – saw profits double from 2008 to 2010, to \$1.8 billion last year. At Barrick Gold Co. of Toronto – the world's largest gold producer, profits for the second quarter of 2011 were \$1.2 billion, up 35 percent over 2010.

Free Minerals

The 1872 Mining Law is one of the last remaining dinosaurs of the old West. Signed by President Ulysses S. Grant over 135 years ago, this law still governs hardrock mining on federal public lands. The law covers hardrock mining on 270 million of acres of publicly owned lands – mostly in the Rocky Mountain West and Alaska.

This antiquated law allows mining companies to take hardrock minerals from public lands with no royalty paid to the taxpayer. Unlike the coal mining industry, which is required by the Surface Mining Control and Reclamation Act (SMCRA) to pay an 8% or 12.5% royalty, gold, copper, silver and uranium are frequently taken from our forests and other lands by both foreign and domestic mining companies with no return to the federal treasury.

The United States is the only country in the world that does not charge a royalty for minerals taken from federal lands, and claims are on the rise. From 2005 to 2010, the number of mining claims on public lands rose by 74%.

Hardrock mining companies should be required to pay a royalty similar to what other extractive industries pay – a gross proceeds royalty, based on the value of the mineral minus the smelting costs. A 12.5% royalty on the minerals taken from public lands could generate as much as \$300 million a year.

Real and meaningful reform of the 1872 Mining Law must contain several other key principles in addition to a royalty:

1. The elimination of patenting of federal lands – the sale of mineral bearing public lands for \$5/acre, or less.
2. The ability of land managers to deny mining activities on federal lands where conflicts exist with other, more important resource values.
3. Comprehensive reclamation requirements for all mining, with particular consideration to protecting water resources that could be polluted by mining.
4. Adequate financial assurances in place to cover the costs of reclaiming mines.
5. A reclamation fee charged on all hardrock mining in the United States, regardless of its location, that funds an abandoned mine program.

Double Subsidies

In addition to taking minerals from public lands for free, the hardrock mining industry also receives a substantial additional subsidy called the Percentage Depletion Allowance (PDA). The depletion allowance allows both foreign and domestic mining companies to deduct from its corporate income taxes a fixed percentage of its mine specific income. The rationale for this deduction is that the value of its asset (the mineral in the ground) declines as mining progresses.

For companies that mine on public lands, this amounts to a double subsidy, because the minerals weren't purchased, they were freely taken under the 1872 Mining Law. The Percentage Depletion Allowance is like winning a free car in a sweepstakes and then having the car manufacturer pay you for the fact that the price of the car decreases when you drive it off the lot.

The PDA applies nationwide to mining operations on private and public lands, and constitutes an exceptional tax break for U.S. mineral producers beyond those granted to other private industries. The tax break that Newmont (the world's second largest gold mining company) took under this deduction alone totaled \$151 million in 2010. Repealing the percentage depletion allowance would save the taxpayer \$3.8 billion over 5 years.

Taxpayer Liability for Abandoned Mines

In 1993, Earthworks assessed the scope of the abandoned mine problem and estimated that there are over 550,000 abandoned mines in the U.S., mostly in the West. To date,

there is still no comprehensive inventory of abandoned hardrock mines, and funds to clean up these sites remain limited because there is no dedicated funding source – unlike with coal mines. The cost to clean up these abandoned sites is staggering. According to the Environmental Protection Agency (EPA), total clean-up costs could exceed \$50 billion.

Western communities face significant burdens associated with these old mines. According to the Environmental Protection Agency, at least 40 percent of the stream reaches in the headwaters of western watersheds are polluted from mining – much of it from abandoned mines. Many of these abandoned mine sites have significant acid mine drainage problems, which can persist for thousands of years if left untreated. Downstream communities pay the costs to clean up water polluted from abandoned mines for household use. Polluted waters affect recreation, agriculture, and impact property values. Fish and wildlife resources are also negatively impacted.

Abandoned uranium mines pose the added threat of radiation. Surface and underground uranium mining produces waste, which contain naturally occurring radioactive materials in addition to the heavy metals found in most hardrock mine waste. When these toxic materials become exposed to the environment through mining activities, they can be mobilized in air and water. Continued exposure to radioactive materials such as radium and thorium cause serious health problems. The EPA estimates there are at least 4,000 abandoned uranium mines in 14 western states, with most situated in Colorado, Utah, New Mexico, Arizona, and Wyoming.

The single largest obstacle to the restoration of abandoned hardrock mines is the lack of funding. In states like Montana—where revenues exist from a state severance tax and the state is authorized to restore abandoned mines with revenues from the coal abandoned mine land fund— there is a small stream of revenue (on average about \$3.5 million) available to remediate only a few small sites a year, but it is not enough to address the serious problems posed by the 6,000 inventoried abandoned mines across the state, and the estimated 3,700 miles of rivers and streams polluted by harmful metals, primarily from abandoned mines. In other states, such as California and New Mexico, there are few sources of funds available to correct this pervasive problem in old mining districts. As a result, the number of abandoned mine lands that cause safety or environmental hazards far outweigh the funding available to restore them.

Unlike the coal mining industry, which is required by the Surface Mining Control and Reclamation Act (SMCRA) to pay into an Abandoned Mine Land Fund via a reclamation fee, the hardrock mining industry pays no such fee. A steady-stream of long-term funding for hardrock AML clean up, similar to the SMCRA program, is essential to dealing with the scope of the problems western states face from abandoned mines.

As part of its FY2012 budget, the Obama administration has proposed a 1% reclamation fee on all hardrock mining, similar to the fee paid by coal mines. This fee would generate \$200 million per year to fund abandoned mine restoration, creating an estimated 13,000 jobs per year.

Current and Future Taxpayer Liability

While abandoned mine sites litter the landscape of the western United States, currently existing mines are likely to produce even more polluted streams and scarred lands. In modern mining, reclamation bonds and similar forms of financial assurance are intended to guarantee that if a mining company is unable or unwilling to clean up after a mine closes, funds will be available to remedy and prevent pollution at the site.

American taxpayers today are potentially liable for more than \$12 billion in clean-up costs for currently operating hardrock mining sites. Because mining companies are inadequately insured to pay for cleaning up their toxic pollution, the public is left footing the enormous costs. According to GAO, from 1997 to 2008, four federal agencies—BLM, the Forest Service, EPA, and OSM—had spent at least a total of \$2.6 billion to reclaim abandoned hardrock mines on federal, state, private, and Indian lands.

Perpetual water pollution is one of the most serious consequences of large-scale industrial mining operations and one of the most costly post-closure expenditures. This problem is exacerbated by two loopholes in the Clean Water Act that allow mining companies to dump their waste directly into streams, wetlands and lakes. Hardrock mines produce millions, sometimes billions of tons of waste. The production of one gold ring produces 20 tons of mine waste. Mine waste and tailings frequently contain toxic chemicals such as arsenic, cadmium, and lead.

The first loophole is found in EPA and Army Corps of Engineers regulations that state that Clean Water Act protections do not apply to what the Corps calls “waste treatment systems.” This exclusion allows mine developers to build a dam across the mouth of a valley and dump their wastes into the waters behind the dam because these waters have become part of a “waste treatment system” and are no longer considered to be a river, lake, or wetland deserving of protection. This legal fiction--that waters impounded by mine developers are no longer waters--defeats the very purpose and spirit of the Clean Water Act.

During the Bush administration, EPA and the Army Corps of Engineers created a second dangerous loophole that has allowed mining corporations to call mining waste “fill material” and therefore bypass pollution standards – even though the waste includes toxic chemicals. Because of these two loopholes, it has become a common industry practice for mines to use our lakes, streams, and other waters as cheap toxic waste dumps.

By closing loopholes in the Clean Water Act, we can prevent some of the long-term pollution problems associated with many open pit mines. This, coupled with reforming the way that financial assurances are calculated, will ensure that each mining companies cost of doing business is internalized and American taxpayers are not left to foot the bill for clean up of dozens of mine sites with inadequate reclamation bonds. We must protect the public from further liability in the event a company cannot meet its environmental obligations.

Conclusion

It's past time for taxpayers to stop directly subsidizing multibillion-dollar mining companies with royalty-free mining and massive tax breaks. We need also stop indirectly subsidizing these multinational corporations by allowing them to foist the environmental costs of extraction onto taxpayers and communities.

Taxpayers and the communities that live with these pollution issues each day deserve better. Free minerals, abandoned mines, tax deductions, loopholes from major environmental laws and inadequate bonding have created an expensively unsustainable situation in this country. Hundreds of billions of dollars of taxpayer resources have been gifted to the mining industry by the 1872 Mining Law. And billions more are essentially given away each year – money that could be used to create jobs to clean up our nation's waters and lands.

Earthworks recommends Congress end the subsidies for the mining industry, starting with real and meaningful reform of the 1872 Mining Law. Any law that gives away community property while allowing mining to occur in sacred and otherwise special places is long past due for an overhaul. We also encourage the Obama administration to prevent future expensive environmental liabilities by closing loopholes in the Clean Water Act that allow mine waste dumping in our nations waters, and by strengthening current bonding standards under the Federal Land Management and Policy Act.

We encourage the Joint Select Committee on Deficit Reduction to move forward with a reclamation fee on all hardrock mining operations. The steady-source of funding created by this fee will go a long way in reducing the current taxpayer burden for this liability. We also hope that the Select Committee will repeal the Percentage Depletion Allowance for nonfuel (hardrock) minerals, which will help decrease the deficit by almost \$800 million a year.